

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of

Connect America Fund)	WC Docket No. 10-90
)	
A National Broadband Plan for Our Future)	GN Docket No. 09-51
)	
Establishing Just and Reasonable Rates for Local Exchange Carriers)	WC Docket No. 07-135
)	
High-Cost Universal Service Support)	WC Docket No. 05-337
)	
Developing an Unified Inter-carrier Compensation Regime)	CC Docket No. 01-92
)	
Federal-State Joint Board on Universal Service)	CC Docket No. 96-45
)	
Lifeline and Link-Up)	WC Docket No. 03-109
)	
Universal Service Reform – Mobility Fund)	WT Docket No. 10-208

REPLY COMMENTS OF THE MINNESOTA TELECOM ALLIANCE

The Minnesota Telecom Alliance (“MTA”)¹ submits the following Reply Comments to the Federal Communications Commission (“Commission”) in response to the Commission’s November 18, 2011 Report and Order and Further Notice of Proposed Rulemaking.²

¹ The MTA is a trade association representing the interests of over 80 small, medium, and large companies that provide advanced telecommunications services, including voice, data and video to consumers throughout rural, suburban, and urban Minnesota.

² *Connect America Fund; A National Broadband Plan for Our Future; Establishing Just and Reasonable Rates for Local Exchange Carriers; High-Cost Universal Service Support; Developing an Unified Inter-carrier Compensation Regime; Federal-State Joint Board on*

The MTA generally supports the Rural Association Comments filed on February 24, 2012.³ In order to reduce the likelihood of “massive disruption to rural consumers and carriers”⁴ is essential that the Commission enact further high-cost Universal Service Fund (“USF”) reform in careful and methodical alignment with Intercarrier Compensation (“ICC”) reform. The MTA provides the following reply comments with respect to the Rural Association Comments on several key components to “thoughtfully calibrated” reform.⁵ The MTA also supports the MIEAC Comments.⁶

1. The FCC Lacks Authority To Regulate Or Mandate Rate Reductions To Originating Intrastate Access.

The MTA agrees with the Rural Association Comments and MIEAC Comments that there is no jurisdictional foundation for the Commission to impose changes with respect to originating intrastate access charges.⁷ Nothing in Communications Act of 1934, as amended, empowers the Commission to regulate the rates, terms or conditions of originating intrastate access. Rather, action by the Commission to mandate changes to originating intrastate access charges interferes with State authority over intrastate rate-setting.

Universal Service; Lifeline and Link Up; Universal Service Reform – Mobility Fund; Report and Order and Further Notice of Proposed Rulemaking, WC Docket Nos. 10-90, 07-135, 05-337, 03-109; CC Docket Nos. 01-92, 96-45; GN Docket No. 09-51; WT Docket No. 10-208, Released November 18, 2011 (the “Order”).

³ Initial Comments of the National Exchange Carrier Association, Inc.; National Telecommunications Cooperative Association; Organization for the Promotion and Advance of Small Telecommunications Companies; and the Western Telecommunications Alliance, on sections XVII.L-R (Intercarrier Compensation Issues) (the “Rural Association Comments”).

⁴ *Id.* at 3.

⁵ *Id.*

⁶ Comments of Minnesota Independent Equal Access Corp. (the “MIEAC Comments”).

⁷ Rural Association Comments at 9-10; MIEAC Comments at 6-8.

As noted in the MIEAC Comments, Section 2(b) of the Act generally preserves the jurisdiction of the states regarding “charges, classifications, practices, services, facilities, or regulations for or in connection with intrastate communications service.”⁸ There is nothing in the Act that overrides that general preservation of state jurisdiction with respect to charges for intrastate originating traffic.

Interpreting Section 251 (b)(5) to extend federal jurisdiction to intrastate originating traffic is inconsistent with the preservation of state authority in Section 2 (b). Section 251(b)(5) expressly limits the scope of required reciprocal compensation arrangements to “the transport and termination of telecommunications.” This express limitation is consistent with the conclusion that Section 2(b) preserves the authority of the states with respect to charges for intrastate originating traffic.

Both the plain language of Section 251(b)(5) and history show that it does not contain any prohibition against any charges for originating traffic. It is inconsistent with the plain language of Section 251(b)(5) and inconsistent with the history of over 15 years during which both Section 251(b)(5) and intrastate originating access charges have been in effect. Section 251(b)(5) identifies the obligations of local exchange carriers and does not address the question of the Commission’s jurisdiction. There is also no basis to infer a prohibition of a practice (charges for originating traffic) from the fact that the a statute does not mention a topic (originating traffic). In short, statutory silence does not equate to a statutory prohibition. Further, identification of the obligations of a local exchange carrier does not equate to a grant of

⁸ 47 U.S.C. § 152(b)(1).

authority, much less preemptive authority, to the Commission. As noted in the MIEAC Comments, the Supreme Court has recognized that a different subsection of Section 251 (subsection g) is not a grant of authority.⁹ Finally, Section 251 (b)(5) has been in effect for over 15 years, during which originating access charges have been in effect, which further undercuts any claim of a prohibition on compensation in Section 251 (b)(5).

There is also no basis to conclude that intrastate originating traffic cannot be separated from terminating traffic or interstate originating traffic. Thus, there is no inherent impossibility of maintaining separate interstate and intrastate originating regimes that would support preemption of state authority.¹⁰ Section 201(b) similarly does not provide authority to override state jurisdiction over intrastate originating traffic and compensation.¹¹

2. The Commission Should Not Migrate Tandem Switching And Transport Rate Elements To Bill-And-Keep.

The MTA agrees with the Rural Association Comments that reform of tandem switching and transport charges should be connected to a careful review of interconnection rights and obligations in order to avoid upsetting interconnection arrangements and creating new arbitrage opportunities.¹² Specifically, the Commission should not migrate Tandem Switching and Transport Rate Elements to Bill-and-Keep until it evaluates the reforms already made, pairs reductions with sufficient cost recovery and coordinates with interconnection reform.¹³

⁹ MIEAC Comments at 8; *AT&T Corp. v. Iowa Utils. Bd.*, 525 U.S. 366, 383 (1999).

¹⁰ MIEAC Comments at 8; Rural Association Comments at 10.

¹¹ Rural Association Comments at 10.

¹² *Id.* at 14-15.

¹³ *Id.*

Bill-and-Keep under its current wireless model does not allow for customer choice of a long distance carrier, thus providing the carrier to pass specific cost to the end user based on usage. Moving to Bill-and-Keep without eliminating the obligation for equal access ignores a key component for local carriers to recover costs from their end users, which is the foundational element in a Bill-and-Keep formula. Continuing the right for consumers to choose their long distance provider (thus maintaining equal access and the viability of 800 numbers) should allow the providers of the local facility to bill appropriate charges to the long distance provider for utilizing its network in the provision of its service.

The Rural Association Comments aptly describe, in an illustration of how reduction or elimination of transport rates in a switched access tariff, would necessarily implicate the functionally equivalent service in a special access tariff as “just one example of many.”¹⁴ A comprehensive review and coordinated reform of tandem switching and transport rate elements is necessary to further the Commission’s goals of establishing a “more economically rational rate structure and send more accurate price signals to consumers, carriers, and potential competitors.”¹⁵

The MTA also supports the MIEAC Comments. The MIEAC Comments demonstrate the value of tandem services provided by MIEAC to many local exchange carriers, including many MTA members.¹⁶ The value of the services provided by MIEAC and other tandem service providers justifies continuation of an access charge process for both originating and terminating

¹⁴ *Id.*

¹⁵ *Id.* at 16-17.

¹⁶ MIEAC Comments at 6.

traffic.

3. It Is Premature To Consider The Phase-Out Of Access Recovery Charges (ARCs) and CAF ICC Support Before They Have Even Been Implemented.

The MTA agrees with the Rural Association Comments that it is highly premature to consider a defined phase-out and elimination of ARCs and CAF ICC support.¹⁷ Such changes may have unanticipated consequences and be very harmful to rural consumers served by many MTA members. The operation of ARCs and CAF ICC support and the impact on rural LECs' ability to recovery costs are completely unknown. In this context, the universal service goal of "reasonably comparable service at reasonably comparable rates is under severe threat."¹⁸ The impacts of further unknown changes are even less predictable and compound the threats to universal service goals.

The goals of network modernization are also severely threatened. The Order states that one of the main goals of ICC reform is to "provide more certainty and predictability regarding revenues to enable carriers to invest in modern, IP networks."¹⁹ Rural LECs are faced with the significant financial challenges associated with implementing new and more efficient technology under the 5% per year reduction adopted in the Order. If those carriers are faced with further

¹⁷ Rural Association Comments at 31-35.

¹⁸ 47 U.S.C. § 254 (b)(3) reads:

Consumers in all regions of the Nation, including low-income consumers and those in rural, insular, and high cost areas, should have access to telecommunications and information services, including interexchange services and advanced telecommunications and information services, that are reasonably comparable to those services provided in urban areas and that are available at rates that are reasonably comparable to rates charged for similar services in urban areas. (Emphasis added.)

¹⁹ *Order and FNPRM* at ¶ 9; Rural Association Comments at 34.

near term reductions (or the possibility of further near term reductions), many of those carriers will likely be unable to justify further investments, even if efficiency is improved.

The inability of many rural LECs to recover their costs was the basis of the petition for reconsideration for a reasonable method for recovery of costs allocated to switched access elements.²⁰ Certainly, the Commission should not compound the cost recovery dilemma already facing rural LECs by a further reduction to ARCs and CAF ICC support or by the *threat of* a further reduction to ARCs and CAF ICC support, which undermines the predictability intended by the *Order and FNPRM*.

4. The Commission Should Act Now to Further Mitigate Phantom Traffic.

The Order adopted requirements that information identifying the originating caller be included and provided from one carrier to the next in call signaling.²¹ While this is useful information, it is not always sufficient to identify a responsible party to be billed for access. As a result, the Commission should also require that information identifying the responsible carrier (such as the CIC or OCN of the carrier) be included in the call records provided from one carrier to the next.²²

Further, the inclusion of ICC obligations on providers of VoIP will make it necessary for all carriers to operate with a CIC or OCN and also to transmit information regarding the identity

²⁰ Rural Association Comments at 33.

²¹ Order at ¶¶ 724, 725.

²² Rural Association Comments at 43.

of the carrier responsible for terminating access in the call records for all traffic. This obligation should also extend to providers of “one way” VoIP.²³

Finally, extending the obligation to provide information identifying the originating carrier need not be dependent on resolution of other issues, such as access to numbering resources for VoIP carriers. The obligations to identify (and assume financial responsibility) for originated calls is not dependent on, or even logically related to, how other issues relating to those carriers may be resolved and the FCC can and should act on it independently.

5. Conclusion.

For the reasons described above, the MTA recommends that the Commission act to ensure that the intercarrier compensation and universal service reforms, that it ultimately adopts, will allow rural consumers to continue to have access to broadband and voice services that are reasonably comparable to those available in urban areas.

Date: March 30, 2012

Respectfully submitted,

/s/ Richard J. Johnson

Attorney on Behalf of the
Minnesota Telecom Alliance

²³ *Id.*

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Reply Comments was served this 30th day of March, 2012, by electronic filing and e-mail to the persons listed below.

By: /s/
Karen E. Berg

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